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A. Preliminary Amendments

A1. If an application is filed with a preliminary amendment to add several new claims, does the preliminary amendment have to include a complete listing of all claims in compliance with revised 37 CFR 1.121? (posted August 14, 2003)

Yes, the preliminary amendment must be filed in compliance with revised 37 CFR 1.121 with a complete listing of the claims. The new claims should have the status identifier, "new".

Applicant should not use the status identifier, "original" for the claims added in the preliminary amendment, even if the application was filed with an oath or declaration that has a statement referring to the preliminary amendment.

If applicant files a subsequent amendment that includes a complete listing of the claims, applicant should use the status identifier, "previously presented" (if the claims added in the preliminary amendment are not being amended), or "currently amended" (if the claims added in the preliminary amendment are being amended).

Filing an application with a preliminary amendment is not recommended. Applicants are encouraged to file the application with a specification that includes the desired set of claims. See File Continuation or Divisional Application with a New Specification and Copy of Oath or Declaration from Prior Application, 1251 Off. Gaz. Pat. Office 54 (October 9, 2001).

A2. Can I use the transmittal letter of a continuation or divisional application to amend the first sentence of the specification to add the benefit claim to the parent application? (posted August 14, 2003)

No, a preliminary amendment cannot be made in a transmittal letter or form for the filing of an application. The amendment to the specification that adds the specific reference to the parent application in the first sentence of the specification following the title must be provided on a separate sheet of paper in compliance with revised 37 CFR 1.121.

Applicant may wish to provide the specific reference in an application data sheet (ADS) under 37 CFR 1.76 or in a new specification instead of filing a copy of the specification of the parent application with a preliminary amendment.

The Office transmittal forms will no longer permit any preliminary amendment to be made in the transmittal form. If applicants are using a transmittal form that provides a box for a preliminary amendment, applicants are advised not to use such box, but to provide the preliminary amendment